

Decision **DRAFT DECISION OF ALJ HALLIGAN** (Mailed 4/15/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanism For
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**INTERIM OPINION ADDRESSING PETITION FOR MODIFICATION
OF DECISION 02-09-053 BY THE DEPARTMENT OF WATER RESOURCES****1. Summary and Background**

By Decision (D.) 02-09-053, the Commission allocated the Department of Water Resource's (DWR) long-term power contracts among Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE), collectively referred to as "the utilities." As explained in that decision, the allocation of DWR's contracts was a necessary step towards achieving the Commission's and the Legislature's goal of returning the utilities to the procurement function by January 1, 2003.

On December 3, 2002, DWR sent a memorandum to Commissioner Lynch, requesting that the Commission consider modifying D.02-09-053 to reallocate Product D of the Williams contract from SDG&E to SCE, in light of recent renegotiations of that contract. Per the Assigned Commissioner's ruling,¹ dated

¹ Commissioner Lynch was the commissioner assigned to this matter through March 18, 2003, when the matter was reassigned to Commissioner Peevey.

December 20, 2002, we address DWR's memorandum as a Petition For Modification of D.02-09-053 (Petition).

We have carefully reviewed DWR's Petition and parties' comments, and deny DWR's request. As discussed in this decision, DWR's proposed contract reallocation would dramatically alter the balance achieved in D.02-09-053 with respect to allocated energy, capacity, residual net short and other comparison metrics considered in that decision, without clear, compensating advantages.² We also find that the economic and reliability enhancements that DWR associates with its proposal can be acquired without disrupting this balance, i.e., through contractual arrangements between SCE and SDG&E, as needed.

2. The Williams Contract and DWR's Reallocation Proposal

DWR entered into a contract with Williams Energy Marketing and Trading Company ("Williams") on February 16, 2001. The original contract delivered up to 1,400 megawatts (MW) of must-take energy products to SP-15 delivery points (i.e., delivery points south of Path 15). On November 11, 2002, the Williams contract was amended as a result of renegotiations. The amended contract delivers 60% less must-take energy and up to 1,175 of dispatchable capacity. The must-take energy continues to be delivered to SP-15. Product D dispatchable capacity is delivered to the bus bar of the facilities ("designated units") that produce the power, which is within SCE's service territory.

² The term "residual net short" refers to the power that the utility still needs to procure to meet loads after DWR contract quantities are allocated.

In its Petition, DWR recommends that the Commission consider reallocating the Product D capacity product to SCE.³ In DWR's view, there are several advantages to this reallocation. First, DWR asserts that allocation of Product D to SCE would allow it to avoid other capacity purchases and ensure economic and system reliability benefits to the end users. Second, DWR argues that Product D capacity better matches SCE's demand for reserves. Third, DWR believes that SCE should have dispatch control of Product D because of the location of the delivery points and SCE's familiarity with the operations of the designated units. Finally, DWR argues that the reallocation will not significantly result in a significant reduction in energy supplied to SDG&E under the contract.

3. Position of the Parties

Comments on DWR's Petition were filed on January 15, 2003 by SCE, SDG&E and PG&E. The utilities oppose adopting DWR's reallocation proposal for the reasons summarized below.

SDG&E argues that DWR's Petition is a piecemeal re-visitation of the adopted contract allocations that could set an undesirable precedent. Moreover, SDG&E contends that the record is not adequate because DWR provides no analysis of the resulting impacts on costs to SDG&E's customers. SDG&E requests that the Commission not take action on the substance of DWR's request at this time. However, SDG&E would be amenable to further discussions among interested parties to craft a resolution that provides equity to SDG&E's electric customers, subject to Commission approval.

³ DWR does not recommend changing the allocation of the must-take energy product to SDG&E.

PG&E strongly opposes DWR's Petition even though, from an operational standpoint, it is not directly affected by the proposed reallocation. PG&E argues that reallocating the DWR long-term contracts every time one is renegotiated would impose an intolerable level of uncertainty and severely impair the utilities' ability to resume the procurement function.

SCE recommends that the Commission "resoundingly reject DWR's proposal to reallocate Williams Product D to SCE's customers, unless it also intends to consider the reallocation of other DWR contracts between SCE's and SDG&E's customers."⁴ More specifically, SCE asserts that its customers would be inequitably burdened under DWR's proposed reallocation, and SDG&E's customers would be the subsidized beneficiaries.

Reply comments were filed by the California Biomass Energy Alliance (CBEA) and DWR. CBEA presents no opinion on the merits of DWR's request, but urges the Commission to afford DWR the opportunity to submit petitions for modification of D.02-09-053 whenever DWR believes it is in the public interest to do so. In response to the utilities' comments, DWR suggests that the Commission consider directing parties to meet and discuss broader reallocation options as an alternative to its Petition.

4. Discussion

Before turning to the substantive issues, we address CBEA's procedural concerns by noting that our Rules of Practice and Procedure afford all interested

⁴ Comments of SCE on DWR's Petition For Modification of D.02-09-053, January 15, 2003 (SCE Comments), p. 11. We note that SCE spends several pages (in particular, the entirety of Section II) critiquing the DWR revenue requirement allocation methodology adopted by the Commission in D.02-12-045. These arguments and contentions are not responsive to the Petition and are not considered in this decision.

parties (and participating state agencies, such as DWR) the opportunity to petition this Commission to make changes to an issued decision.⁵ Nothing in today's decision is intended to preclude DWR from making such requests to further the public interest. However, the burden is on the petitioner, in this case DWR, to justify its request, as described in our rules:

“A petition for modification must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed (Rule 73). Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.”⁶

With regard to the merits of DWR's Petition, we note that DWR presents only a very brief, general discussion of what it believes to be the advantages of allocating Product D of the Williams Contract to SCE. DWR does not reference the factual record or the decision language with respect to the various comparison metrics the Commission considered in reaching its contract allocation determinations, including those that DWR calculated and presented to the Commission during the course of the proceeding. At the request of the Assigned Commissioner, DWR calculated the impact of its reallocation proposal on the comparison metrics it prepared earlier, e.g., allocated capacity, energy, residual net short and must-take surplus, relative to the allocation adopted in D.02-09-053. Those calculations are presented in Table 1. The Assigned

⁵ Rules of Practice of Procedure, Rule 47.

⁶ *Ibid.* Rule 47(b).

Commissioner also directed SCE to prepare calculations of the above-market costs associated with DWR's proposal, using methods comparable to those underlying the calculations SCE presented in the proceeding and that are referenced in D.02-09-053. SCE's calculations are presented in Table 2.⁷

Based on the information contained in Table 1, we conclude that the proposed reallocation would have a significant impact on SDG&E's need to purchase energy as well as capacity, contrary to DWR's assertions in its Petition. Specifically, the proposed reallocation would decrease the allocation of contract capacity to SDG&E from 22% to 12%, decrease allocated energy from 16% to 11% and increase SDG&E's residual net short from 16% to 31% of total load. Table 1 shows that there would be corresponding changes to the SCE's allocated energy and capacity (increases), and residual net short (decrease).⁸

As discussed in D.02-09-053, we adopted a contract allocation that achieved an appropriate balance among the competing proposals, in terms of the allocation of contract capacity, energy, residual net short, and other comparison metrics presented by the parties, including the above-market cost metric presented by SCE. As shown in Table 2, DWR's reallocation proposal would increase the above-market costs associated with the contracts allocated to SCE from 41% (as a percentage of total) to 48%, and decrease those associated with the contracts allocated to SDG&E from 15% to 9%.

⁷ See Assigned Commissioner's Ruling Requesting Additional Information and Comments, dated December 20, 2002; Memorandum from DWR to Commissioner Lynch, dated January 6, 2003; SCE Comments, Attachment A.

⁸ The percentage change increase in SDG&E's residual net short is larger than the corresponding decrease in SCE's residual net short because the base of that allocation metric (which is load) is much smaller for SDG&E than it is for SCE.

DWR provides no persuasive arguments for making this dramatic change in allocation, particularly at a point in time when the utilities are moving forward with their procurement plans based on the allocation adopted in D.02-09-053. Pursuant to D.02-10-062, the utilities filed their revised procurement plans, and the Commission approved those plans in D.02-12-074. SDG&E's procurement plan is premised on the entire Williams contract being available to SDG&E. Both SDG&E and SCE would need to revise their plans, subject to Commission approval, if DWR's reallocation of Product D from that contract were to occur. As we discussed in D.02-09-053, reallocating DWR contracts whenever a renegotiation took place in the future would introduce "an unacceptable level of additional uncertainty and complexity into the procurement process going forward."⁹ In examining such proposals on a case-by-case basis, we would need to be persuaded that the advantages in reallocation clearly outweigh the disadvantages.

Not only are there clear disadvantages to DWR's proposal, in terms of the resulting impact on allocated energy, capacity, residual net short and other comparison metrics we considered in D.02-09-053, but we believe that the advantages claimed by DWR can be achieved by other means. As SDG&E points out in its comments, the economic and reliability enhancements that DWR associates with its proposed contract reallocation can be acquired without disrupting the contract allocation balance we achieved in D.02-09-053:

"The Commission can certainly expect that SDG&E and SCE (as well as PG&E) will be in communication as appropriate during 2003 and thereafter, attempting to optimize procurement

⁹ D.02-09-053, p. 65.

decisions. If SDG&E has idle Williams capacity available that SCE finds attractive, SDG&E and SCE can explore making resources available to SCE from the Williams contract as necessary. There is no need to allocate Product D from that contract to SCE for this purpose. As long as the resource is located in SP-15, as is the case here, there is no basis to assume, as DWR does, that economic and reliability benefits are necessarily enhanced by allocating Product D to SCE.”¹⁰

For these reasons, we deny DWR’s Petition. For similar reasons, we find no merit to initiating a broad, open ended discussion of contract reallocation as an alternative to approving the Petition, as DWR suggests.

5. Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on May 5, 2003 by DWR. No reply comments were submitted.

In its comments, DWR states that it “does not disagree with the Draft Decision's conclusions,” and suggests that any contractual arrangement between SCE and SDG&E be implemented in a manner consistent with Assembly Bill 1 of the First Extraordinary session of 2001 (AB 1X). DWR also states that the operating agreements should be revised to accommodate any bilateral arrangement between utilities with respect to DWR energy.¹¹ As discussed in this decision, SCE and SDG&E may explore making resources available to SCE

¹⁰ Response of SDG&E to Petition of DWR to Modify D.02-09-053, January 15, 2003, pp. 3-4.

¹¹ DWR Comments on Draft Decision, May 5, 2003, p. 1.

from the Williams contract. They should take DWR's comments into account in doing so, as appropriate.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Julie Halligan is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. DWR's proposed reallocation of the Williams contract would have a significant impact on SDG&E's need to purchase energy as well as capacity, with a resulting increase from 16% to 31% in SDG&E's residual net short (as a percentage of load). SCE would experience a corresponding decrease in capacity and energy allocated from the DWR contracts.

2. DWR's reallocation proposal would increase the above-market costs associated with the contracts allocated to SCE from 41% to 48%, and decrease those associated with the contracts allocated to SDG&E from 15% to 9%.

3. DWR's proposed contract reallocation would dramatically alter the balance achieved in D.02-09-053 with respect to allocated energy, capacity, residual net short and other factors considered in that decision.

4. Adoption of DWR's reallocation proposal at this time would require SDG&E and SCE to revise their procurement plans, subject to Commission approval, thereby introducing substantial uncertainty into the procurement process currently underway. Initiating a broad, open ended negotiation of contract reallocation, as DWR suggests, would have similar impacts.

5. The economic and reliability enhancements that DWR associates with its proposed contract reallocation can be acquired through contractual arrangements between SCE and SDG&E, as needed.

Conclusions of Law

1. Because there are clear disadvantages to DWR's proposed contract reallocation, and the advantages claimed by DWR can be achieved by other means, DWR's Petition should be denied.
2. If SCE and SDG&E decide to make resources available to SCE from the Williams contract via bilateral contracting, they should consider DWR's comments on the draft decision regarding the applicability of AB 1X and the need to revise existing operating agreements, as appropriate.
3. In order to continue to proceed expeditiously with the utilities' procurement plans, this decision should be effective today.

INTERIM ORDER

IT IS ORDERED that the Petition For Modification of Decision 02-09-053 submitted by the Department of Water Resources on December 3, 2002 is denied.

This order is effective today.

Dated _____, at San Francisco, California.

TABLE 1
Assessment of Allocation of Capacity, Energy
Residual Net Short and Surplus
(Summary of 7-Year Average – 2003 through 2009)

7 Year Ave		Based on Renegotiated Williams Contract	
		Entire Williams Contract Remains Allocated to SDG&E (1)	Williams Product D Reallocated to SCE
PG&E	Allocated Capacity (% of Total Contract Capacity)	41%	41%
	Allocated Energy (% of Total Contract Energy)	42%	43%
	Residual Net Short (% of IOU Load)	7%	7%
	Must-Take Surplus (% of IOU Load)	3%	3%
SCE	Allocated Capacity (% of Total Contract Capacity)	36%	47%
	Allocated Energy (% of Total Contract Energy)	42%	46%
	Residual Net Short (% of IOU Load)	8%	5%
	Must-Take Surplus (% of IOU Load)	6%	6%
SDG&E	Allocated Capacity (% of Total Contract Capacity)	22%	12%
	Allocated Energy (% of Total Contract Energy)	16%	11%
	Residual Net Short (% of IOU Load)	16%	31%
	Must-Take Surplus (% of IOU Load)	0%	0%
SCE & SDG&E Combined (Additive of Independent Analysis - Not Optimized)	Allocated Capacity (% of Total Contract Capacity)	59%	59%
	Allocated Energy (% of Total Contract Energy)	58%	57%
	Residual Net Short (% of IOU Load)	9%	10%
	Must-Take Surplus (% of IOU Load)	5%	5%

Notes & Assumptions:

- (1) Results may vary from Attachment 4 as presented in the Allocation Decision. Analysis has been updated to account for the renegotiated Williams contract.
- (2) Allocated energy production (includes must-take energy and utilized dispatchable energy) and must-take surplus energy based on estimating utilization of contracts by each IOU independently using deterministic hour-by-hour analysis. Residual net short is before any additional IOU interim or short-term contracts.
- (3) Percentages may not add to 100% due to rounding.

(END OF TABLE 1)

TABLE 2

Above Market Costs "AMC"		D.02-09-053 Allocation	Williams Product D Reallocated to SCE
PG&E	Present Value of AMC (as a % of Total)	44%	44%
SCE	Present Value of AMC (as a % of Total)	41%	48%
SDG&E	Present Value of AMC (as a % of Total)	15%	9%
SCE & SDG&E Combined	Present Value of AMC (as a % of Total)	56%	56%

Notes:

- 1) Percentages may not add due to rounding.
- 2) Mark-to-market analysis based on January 10, 2003 forward quotes.
- 3) Updated from SCE's July 24, 2002 and August 5 2002 filings, including renegotiated contracts (as posted on CDWR website).

(END OF TABLE 2)